

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CR. NO. 09-20549-05

Judge: **HOOD**

MUJAHID CARSWELL, D-5,

Defendant.

**DEFENDANT CARSWELL'S NOTICE OF JOINDER
AND SUPPLEMENTATION OF DEFENDANT DRIVER'S
MOTION FOR REVIEW OR, IN ALTERNATIVE, TO TURN
OVER TO COURT FOR IN CAMERA INSPECTION
AND DISCLOSURE TO DEFENSE**

NOW COMES Defendant, Mujahid Carswell, by and through his attorneys, Andrew Densemo and Jill Leslie Price of the Federal Defender Office, and hereby provides notice of his intent to join in Defendant Driver's Motion For Review or, in Alternative, to Turn Over to Court for In Camera Inspection and Disclosure to Defense. (R. 189). In addition, Defendant Carswell moves this Court to add the disclosure of text messages and emails to the scope of this Motion.

The changes resulting from the use of electronic media are affecting many things, including the courts. In support of this Supplementation to Defendant Driver's Motion, Counsel submit that F.R. Cr. Pro. 16(a)(2) and 18 U.S.C. 3500 require the Government to disclose prior recorded statements of its witnesses after they testify. The relatively new process of communicating through text messages and emails must now be considered to be withing the ambit of statements covered by Jencks. *United States v. Suarez*, 2010 WL

4226524 (D.N.,J) at p. 4-5.

In the present case, the government used more than one individual to electronically record many hours of conversations with alleged members of the conspiracy over a significant period of time, including recordings made during travel outside the District. It is reasonable to assume that some form of electronic documents were generated when agents communicated with these potential witnesses during the course of the investigation. The role played by the individuals recording these conversations, their statements to agents and instructions received are highly relevant to the defense of the charges in this case. Accordingly, they are subject to disclosure pursuant to *Jencks*. *U.S. v. Suarez, supra* at pp. 4-8.

Although counsel recognize *Jencks* materials are not required to be turned over prior to the witness' testimony, the practice in this District often provides *Jencks* material in advance of trial. Moreover, even if the Government declines to disclose *Jencks* material prior to the witnesses trial testimony, Counsel felt it important to request that the Government identify and preserve any emails and text messages between potential government witnesses and government agents so that they will be available when the witness testifies at trial.

Respectfully submitted,

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Dated: December 10, 2010

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

vs.

CR. NO. 09-20549
HONORABLE DENISE PAGE HOOD

MUJAHID CARSWELL,

Defendant.

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CERTIFICATE OF SERVICE

I, hereby certify that on December 10, 2010, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

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